IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2315 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAKUL M TRIVEDI

Versus

GUJARAT RAJYA SAHAKARI KHAND UDYOG SANGH LTD

Appearance:

1. Special Civil Application No. 2315 of 1995

MR AK CLERK for Petitioner No. 1

Mr. Keyur D. Gandhi for NANAVATI ASSOCIATES for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Clerk for the

petitioner and Mr. K.D. Gandhi for the respondents. In this petition, the petitioner workman has challenged the award made by the labour court, Ahmedabad in Reference (LCA) No. 1295 of 1988 dated 24th October, 1994 wherein the reference has been rejected by the labour court, Ahmedabad.

Learned advocate Mr. Clerk submits that the labour court has not properly read the evidence led before it and has not properly appreciated the definition of the term 'workman'. He also submits that the findings given by the labour court are erroneous and contrary to section 2(s) of the ID Act, 1947. According to Mr. Clerk, the petitioner was performing technical work and he was falling within the definition of workman. He also submits that the limit of Rs.1600.00 salary was also not properly appreiated by the labour court. He submits that the petitioner was on probation and by penal action, his service was terminated without holding the departmental inquiry and also without giving proper opportunity of hearing to the petitioner, therefore, the award of the labour court is required to be quashed and set aside.

Learned Advocate Mr. Gandhi appearing for the respondents submit that the labour court has properly appreciated the evidence and has rightly come to the conclusion that the moment probation period is over, his service was terminated and, therefore, there is no need to comply with the provisions of section 25-F of the ID Act, 1947. He also submits that there was no need to hold departmental inquiry against the petitioner and the labour court was right in recording such finding and, therefore, the labour court has rightly examined the matter and has rightly passed the award without committing any illegality.

I have considered the submissions made by the learned advocates for the parties. Two questions were examined by the labour court. One is that the petitioner was not a workman as defined under section 2(s) of the ID Act, 1947. Labour court has considered the oral evidence and various documentary evidence produced by the parties before it and has also considered the salary of the workman which was of Rs.2700.00 on the date of termination. The labour court has appreciated the facts on record and ultimately come to the conclusion that the petitioner is not a workman as defined under section 2(s) of the ID Act, 1947. According to my opinion, these findings are based on appreciation of the facts emerging from the record which cannot be reappreciated by this court while exercising the powers under Article 227 of

the Constitution of India. According to my opinion, the labour court has rightly come to the conclusion that the petitioner is not a workman as defined u/s. 2(s) of the ID Act, 1947. Second question was whether any departmental inquiry was required for terminating the service of the petitioner after completion of the period of probation. This aspect was also examined by the labour court on the basis of the terms and conditions of the order of appointment issued by the employer that if the work of the workman is not found satisfactory, then his services can be terminated without notice. According to the terms of the order of appointment, if the employer is not satisfied with the work after completion of the work, then, on that basis services of such workman can be terminated. After appreciating such term incorporated in the order of appointment, the labour court has come to the conclusion that the action was not penal in nature and, therefore, would not require initiation of any departmental inquiry. The labour court was also right in holding that there is no any victimization against the petitioner and the order is solely based on the terms and conditions incorporated in the order of appointment. Learned advocate Mr. Clerk has not been able to point out any infirmity and/or irregularity or jurisdictional error committed by the labour court. He has also not been able to point out that the findings recorded by the labour court are contrary to the evidence on record.

Therefore, in view of the above discussion, there is no substance in the petition and the same is required to be dismissed. Accordingly, this petition is dismissed. Rule is discharged. There is no order as to costs.

(H.K. Rathod,J.)

Vyas